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UTILITIES DEPARTMENT

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Friday, October 20, 2017

James Marshall, P.E.  
San Joaquin/Delta Unit, NPDES Permitting  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive #200  
Sacramento, CA 95670-6114

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**SUBJECT: CITY OF TRACY COMMENTS ON TENTATIVE ORDER FOR THE RENEWAL OF  
NPDES PERMIT NO. CA0079154**

Dear Mr. Marshall:

The City of Tracy (City) appreciates the opportunity to provide comments on the Tentative Order reissuing the NPDES Permit (NPDES No. CA0079154) for the City's Waste Water Treatment Plant (WWTP). The City also appreciates the efforts of you and your staff to work with the City to resolve several issues during the permit renewal process. The main focus of our remaining comments seeks to avoid enforcement jeopardy for limits or provisions not required by federal or state law. To this end, the City provides the following comments:

- **Daily Limits Should Be Removed.** In Section IV.A.1.a., Effluent Limitations, the City greatly appreciates the removal of daily maximum effluent limitations for BOD and TSS. However, the daily maximum effluent limits for chlorodibromomethane (CDBM), and dichlorobromomethane (DCBM) should also be removed as not required, necessary, or prescribed for human health criteria under federal rules or the SIP.

Federal regulations do not authorize daily limits where monthly and weekly limits are not impracticable. (40 C.F.R. §122.45(d)(2) ("For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards shall unless impracticable be stated as: ... (2) Average weekly and average monthly discharge limitations for POTWs."). Numerous court cases have confirmed that monthly and weekly averages are the only limits required for POTWs. Nevertheless, the Regional Board is proposing daily limits. For DBCM and CDBM, daily limits are not required because these are human health criteria, based on 70 years of

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exposure drinking 2 liters of the water per day. Since the closest drinking water intake is 10 miles away and no one is drinking the City's effluent, these daily limits are overly stringent and not required.<sup>1</sup>

- **State Law Only Requirements.** The City appreciates the modifications made to Section II.C. and the designation of the effluent flow requirement as a discharge prohibition rather than an effluent limit. The City would also like the flow requirement to be designated as required by State Law only. In addition to effluent flow, several other requirements in addition to IV.B., IV.C and V.B. should also be included in this finding. The City requests that Sections III.B, III.D., and III.E. be added to Finding II.C. as requirements that implement State Law only.
- **No Effluent Limits Where No Reasonable Potential.** The City should not have effluent limitations for any constituents without demonstrated reasonable potential (RP). Under 40 C.F.R. section 122.44(d)(1)(i), limits must control conventional, nonconventional, and toxic pollutants only where those pollutants will be discharged "at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality." (See also Water Code section 13377 (requiring effluent limitations to be "necessary"). The proposed permit inserts effluent limitations based upon Best Professional Judgment (BPJ) instead of relying upon the data that demonstrates no reasonable potential to exceed the applicable water quality objectives.

Based on the receiving water and effluent data and the reasonable potential analysis provided by Larry Walker Associates submitted in conjunction with the City's Report of Waste Discharge (ROWD), Section IV.A. of the permit should not include Water Quality Based Effluent Limitations (WQBELs) for BOD, TSS,<sup>2</sup> ammonia, nitrate, acute toxicity, chlorpyrifos, or diazinon as no RP exists for any of these constituents. The justification for most of these constituents is because the City is a WWTP. However, the City should

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<sup>1</sup> The SIP also does not prescribe daily limits for human health criteria. See SIP at pg. 8 ("For this method only [discussing aquatic life criteria translation into WQBELs], maximum daily effluent limitations shall be used for publicly-owned treatment works (POTWs) in place of average weekly limitations.") (emphasis added). No similar language exists for human health criteria.

<sup>2</sup> The Permit waivers between calling the BOD and TSS limits technology-based and water quality-based. If technology-based, then reasonable potential is not required, but if water quality-based, then the Regional Board must demonstrate the reasonable potential to exceed applicable water quality standards for these two constituents. There is no evidence that tertiary-treatment based levels of BOD and TSS impair beneficial uses or cause nuisance so as to exceed the narrative objectives applicable to these constituents.

not be punished with limits where its effluent is very clean. The City has spent millions of dollars on WWTP upgrades to ensure that it does not have RP for most pollutants. The presumption that WWTP effluent may exceed a standard just because it treats domestic or industrial waste is not proven by the effluent data, taken over many decades. And, if the City ever does exceed a standard for any constituent, the permit contains express reopeners allowing the Regional Board to reopen the permit and insert effluent limitations. (See Permit, Section VI.C.1.)

The Regional Board is bound by court and State Water Board decisions, which hold that in the absence of a showing of reasonable potential for a pollutant to be contained in the effluent, the Permit should not contain any limitations on that substance. Where substances were not detected, or were detected at low levels not rising to RP, limits are not required and may be removed from NPDES permits.

Chlorpyrifos and diazinon were not detected in the effluent in the last 4 years, from 2013-2017. Therefore, under the ruling in the *Woodland* case, there is no reasonable potential and an effluent limit is not required. Although the Regional Board relies upon the language in the SIP to impose effluent limits based on a TMDL, the SIP does not apply to these non-California Toxics Rule (CTR) constituents. Federal rules require a reasonable potential analysis first (40 C.F.R. §122.44(d)(1)(ii)), and then if an effluent limitation is required, the permitting authority shall ensure that the effluent limits are consistent with the assumptions and requirements of any available waste load allocation (WLA) in a TMDL (40 C.F.R. §122.44(d)(1)(vii)(B)). To address the need to demonstrate compliance with the TMDL, the City requests that the WLAs for chlorpyrifos and diazinon be applied as Receiving Water Limitations rather than effluent limits, and that the monitoring requirements remain the same to ensure compliance.

If these effluent limits remain in the permit without a finding of reasonable potential, then these are more stringent State law based requirements and the factors in Section 13241 should be considered.

- **Turbidity sampling location.** Provision VI.C.4. of the Tentative Order requires turbidity of the filtered effluent to be measured at eight locations (i.e., after each filtration unit) to ensure that the filtration system is operating correctly. The requirement to measure turbidity immediately after filtration, but prior to disinfection, is typically associated with ensuring that a UV disinfection system will operate correctly or associated with meeting requirements for disinfected tertiary recycled water (e.g., Statewide General Order for Water Recycling Requirements (i.e., WQO 2016-0068-DDW); Section 60301.320 in Title 22 of the California Code of Regulations).

The WWTP uses chlorine disinfection and the appropriate measure of whether the system is operating properly is that the Total Coliform effluent limits are met. In addition, the WWTP effluent is not currently being used for distributing recycled water and, when it eventually does, the effluent quality requirements will be covered by a separate order.

Therefore, the City requests that the filtration monitoring locations be removed from the permit. Turbidity would appropriately be measured at EFF-001 or TCO-001. If the filtration monitoring location remains in the permit, the City requests that only one location be identified (FIL-001) with the following description:

*"A location where a representative sample of effluent from the tertiary filtration system can be collected immediately following filters and before chlorination."*

- **Pollutant free wastewater.** Provision III.E. of the Tentative Order states that "The Discharger shall not allow pollutant-free wastewater to be discharged into the treatment or disposal system". Cooling water or condensate is among the prohibited discharges. This may limit the WWTP's ability to accept wastewater from some of the industrial users in the service area. In addition, this conflicts with potential strategies that the City is considering to achieve compliance with future salinity requirements, such as thermal desalination that creates pollutant free condensate to be blended into the effluent and reduce salinity. Consistent with the current permit language (i.e., Provision III.D in Order No. R5-2012-0115-02), the City requests that the following be added to this provision:

*"This discharge prohibition does not prohibit the return of pollutant-free wastewater from a desalination plant".*

- **Toxicity Trigger.** Section VI.C.2.a. of the Tentative Order establishes a Toxicity Monitoring Trigger of 1 TUc. If the trigger is exceeded, the City is required to conduct additional investigations into the source of toxicity. The City requests that the approved dilution credit of 20:1 be included in the trigger, making the trigger equal 20 TUc.
- **Whole Effluent Toxicity Testing.** Provision V.B.7. of the Monitoring and Reporting Program states that "The chronic toxicity testing shall be performed using the dilution series identified in Table E-5." The City would like the option of performing testing without the dilution series and requests that the following be added to this provision:

*"For routine and accelerated chronic toxicity monitoring, it is not necessary to perform the test using a dilution series. The test may be performed using 100% effluent and **two** controls. A receiving water control and/or laboratory water control may be used as the diluent."*

- **Grab vs composite samples.** Table E-9 on p. E-13-16 specifies the sample type to be collected for Effluent Characterization Monitoring. Several constituents for which a composite sample is specified are more appropriately collected as grabs, consistent with

requirements stated at 40 CFR §122.21(g)(7). This applies primarily to constituents that are likely to change with storage or during the compositing period especially without preservation (i.e., conditions that occur during the collection of a 24-hour composite sample). This includes cyanide, sulfide, volatile organics and other constituents.

The City requests that the sample type for the following constituents be changed from composite to grab in Table E-9:

- Cyanide
- Sulfide
- Hexavalent chromium
- Tributyltin
- 4,4'-DDD
- 4,4'-DDE
- 4,4'-DDT
- alpha-Endosulfan
- alpha-Hexachlorocyclohexane (BHC)
- Aldrin
- beta-Endosulfan
- beta-Hexachlorocyclohexane
- Chlordane
- delta-Hexachlorocyclohexane
- Dieldrin
- Endosulfan sulfate
- Endrin
- Endrin Aldehyde
- Heptachlor
- Heptachlor Epoxide
- Lindane (gamma-Hexachlorocyclohexane)
- PCB-1016
- PCB-1221
- PCB-1232
- PCB-1242
- PCB-1248
- PCB-1254
- PCB-1260
- Toxaphene
- 2,3,7,8-TCDD

- **ROWD submittal date.** The Tentative Order establishes the date for submittal of the ROWD as one year prior to the expiration date of the new permit. The City does not feel that it is necessary to submit the ROWD so far in advance and requests that, consistent with previous permits and applicable rules, the ROWD submittal date be set as 180 days in advance of the permit expiration (i.e. August 4, 2022).

Thank you for the opportunity to provide these comments. Please, contact me should you have additional questions regarding these comments.

Sincerely,



Dale W. Klever, WWTP Operations Superintendent

cc: Kuldeep Sharma, City of Tracy  
Melissa Thorne, Downey Brand LLP  
Betsy Elzufon, Larry Walker Associates  
Jenny Reina, CH2M Hill